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September 7, 1995

VIA HAND DELIVERY

Mr. William Caton
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Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

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SEP - 7-1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Re: Telefónica Larga Distancia de Puerto Rico, Inc.'s Reply Comments
IB Docket No. 95-118

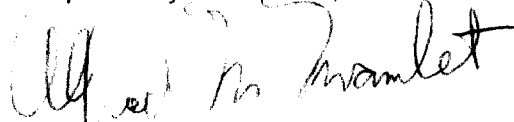
Dear Mr. Caton:

Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD"), by its attorneys, hereby submits for filing an original and five copies of their Reply Comments in connection with the above-captioned matter.

Also enclosed is an additional copy of TLD's Reply Comments which we ask you to date stamp and return with our messenger.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Alfred M. Mamlet
Counsel for Telefónica Larga Distancia
de Puerto Rico, Inc.

/srh-m
Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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SEP - 7 1995

In the Matter of)

Streamlining the International)
Section 214 Authorization Process)
and Tariff Requirements)

FEDERAL COMMUNICATIONS COMMISSION
IB Docket No. 95-118 OFFICE OF SECRETARY

REPLY COMMENTS OF TLD

I. INTRODUCTION

Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") joins the numerous commenters in this proceeding in applauding the Commission's efforts to streamline the International Section 214 application process.^{1/} The Commission's proposals are a step in the right direction toward the elimination of unnecessary regulatory burdens facing international common carriers.

In particular, TLD supports the Commission's proposal to allow foreign affiliated carriers to "apply for global Section 214 authority on routes where they are nondominant."^{2/} Foreign-affiliated carriers are dominant only on routes where their affiliates control bottleneck facilities.^{3/} Therefore, the proposed rule would permit foreign-affiliated companies to receive a "global" Section 214 authorization covering routes where they have no affiliates ("unaffiliated routes"), and would require them to

^{1/} Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118 (1995) ("Streamlining NPRM").

^{2/} Id. at ¶ 15.

^{3/} 47 C.F.R. § 63.01(r)(l).

submit individual applications for Commission review to affiliated countries. A foreign-affiliated carrier would be required to file an application for this global authority. And that application would not be subject to streamlined processing.

TLD supports the critical distinction the Commission has proposed between international routes in which a carrier has an affiliation with a foreign carrier, and those routes where the carrier does not. This distinction accurately recognizes that the potential for anticompetitive conduct or abuse by a foreign-affiliated carrier only exists where that carrier has a presence on both ends of an international route.^{4/} Since there is no potential for anticompetitive conduct on unaffiliated routes, there is no need for individual applications

AT&T has opposed the Commission's proposal to streamline the application process for foreign-affiliated carrier service to unaffiliated countries. AT&T does not identify any theoretical anticompetitive abuse from foreign-affiliated carrier service to unaffiliated countries. Rather, AT&T's position is merely the latest chapter in AT&T's efforts to foreclose competition from foreign-affiliated carriers.

Streamlining foreign-affiliated carrier applications for service to unaffiliated countries will benefit the public by easing entry, increasing competition, and reducing the administrative burdens on the Commission and international carriers. As Chairman Hundt recently explained, "administrative delays in progress to competition are inexcusable."^{5/} Accordingly, the Commission should adopt its proposal, making foreign-affiliated carriers eligible for global authority on their unaffiliated routes.

^{4/} See AmericaTel Corp., 9 FCC Rcd 3993, 3996 (1994) ("Foreign carriers that are permitted to offer end-to-end service on a U.S. international route could obtain an unfair competitive advantage unless U.S. carriers are permitted to do the same.").

^{5/} "Reed Hundt Picks His Battles," Legal Times at 10 (Sep. 4, 1995).

II. THE COMMISSION SHOULD STREAMLINE THE APPLICATIONS OF FOREIGN-AFFILIATED CARRIERS TO UNAFFILIATED COUNTRIES

A. There Is No Significant Risk Of Anticompetitive Conduct By Foreign-Affiliated Carriers On Unaffiliated Routes

The Commission's current policies properly recognize that there is no significant potential for anticompetitive conduct by foreign-affiliated carriers on unaffiliated routes. Ten years ago, the Commission initially concluded that foreign-affiliated carriers should be regulated as dominant on all routes, even those to unaffiliated countries.^{6/} However, the Commission subsequently recognized that its "international dominant carrier policy is overly broad, unnecessarily burdensome and may be detrimental to competition."^{7/} Accordingly, the Commission revised its policy to "regulate a U.S. international carrier, whether U.S. or foreign-owned, as dominant only on those routes where a foreign affiliate of the carrier has the ability to discriminate in favor of its U.S. affiliate in the provision of services or facilities used to terminate U.S. international traffic."^{8/} The Commission concluded that:

By redirecting regulation to those instances where a relationship between a U.S. international carrier and a foreign carrier may present some substantial risk of anticompetitive conduct, we promote competition in the U.S. international service market by reducing the costs of entry and operation, while continuing to protect unaffiliated U.S. carriers from discrimination by foreign carriers.^{9/}

^{6/} International Competitive Carrier, 102 FCC 2d 812 (1985).

^{7/} Regulation of International Common Carrier Services, 7 FCC Rcd 7331, 7332 (footnote omitted) (1992) ("International Common Carrier").

^{8/} Id. (footnote omitted)

^{9/} Id. (footnote omitted)

The Commission's previous analysis applies with equal force here. The Commission should require individual applications "only on those routes where a foreign affiliate of the carrier has the ability to discriminate in favor of its U.S. affiliate in the provision of services or facilities used to terminate U.S. international traffic."^{10/} By requiring individual applications only:

where a relationship between a U.S. international carrier and a foreign carrier may present some substantial risk of anticompetitive conduct, [the Commission will] promote competition in the U.S. international service market by reducing the costs of entry and operation, while continuing to protect unaffiliated U.S. carriers from discrimination by foreign carriers ^{11/}

The Commission's determination that heightened regulation of foreign-affiliated carriers is only necessary on routes where their affiliates controlled bottleneck facilities is confirmed by AT&T's inability to point to even a theoretical possibility of anticompetitive conduct by a foreign-affiliated carrier on an unaffiliated route. Since there is no evidence in the record of any possible harm, much less a "substantial risk" of harm, from foreign-affiliated carriers on unaffiliated routes, the Commission should adopt its proposed treatment of foreign-affiliated carriers.

B. The Public Will Benefit From Streamlining Of Foreign-Affiliated Carrier Applications To Unaffiliated Countries

As the Commission explained in its International Common Carrier proceeding, applying the reduced regulatory treatment accorded to non-dominant carriers to foreign-affiliated carriers will benefit the public by reducing the cost of entry and operation for foreign-affiliated carriers. This principle also holds true for streamlining the Section 214 process. For example, TLD has nine Section 214

^{10/} Id. (footnote omitted)

^{11/} Id. (footnote omitted)

applications pending for facilities-based service to countries where it is a nondominant carrier.^{12/} None of these applications are opposed.^{13/} Some of these applications have been pending for more than a year.^{14/}

Adoption of the proposed rule would allow TLD to expand its service to unaffiliated countries without these administrative delays. Permitting foreign-affiliated carriers that have already received global authorizations to expand their services promptly will benefit the public by promoting competition.

C. AT&T Has Not Demonstrated That Individual Applications By Foreign-Affiliated Carriers Are Necessary

Only AT&T objected to the Commission's proposal to permit foreign-affiliated carriers to obtain global Section 214 authority, claiming that individual applications are "necessary to evaluate the unique public interest factors associated with foreign carrier entry."^{15/} AT&T's argument should be rejected because it has no legal or policy support. Moreover, AT&T's position is inconsistent with its own request to be eligible for a global authorization.

1. AT&T Has No Legal Support For Its Position

AT&T's sole claimed legal support for its position is the TLD Cable Order, 9 FCC Rcd 4041, 4045 (1994).^{16/} That decision hardly supports AT&T's position. In the

^{12/} See FCC File Nos. ITC 94-342, ITC 94-343, ITC 95-028, ITC 95-057, ITC 95-165, ITC 95-166, ITC 95-304, ITC 95-391, ITC 95-490

^{13/} AT&T has dropped its initial opposition in ITC 94-342 and ITC 94-343. In ITC 95-304, AT&T opposed TLD's application only to provide private line service to Spain. TLD amended its application to remove its proposed service to Spain.

^{14/} See FCC File Nos. ITC 94-342 and ITC 94-343.

^{15/} AT&T Comments at 6 (citing Telefónica Larga Distancia, 9 FCC Rcd 4041, 4045 (1994) ("TLD Cable Order"))

^{16/} AT&T Comments at 6

TLD Cable Order, the Commission specifically rejected AT&T's position that "unique public interest factors" had to be shown in order to justify an expansion of facilities-based services by a foreign-affiliated carrier ^{17/} Instead, the Commission stated that the test:

for additional facilities and services to unaffiliated countries is whether the authority requested by TLD poses an additional risk of anticompetitive behavior, and, if so, whether the safeguards we have in effect are sufficient to protect against that risk.^{18/}

Since AT&T was unable to point to **any** risk of anticompetitive harm from TLD's service, the Commission granted TLD authority to initiate facilities-based services to two unaffiliated countries, and to expand its service to several other unaffiliated countries over two major international fiber optic cables.^{19/}

Indeed, after the Commission announced this standard in the TLD Cable Order, AT&T dropped its opposition to three TLD Section 214 applications because it could not point to any anticompetitive risks from TLD's service to unaffiliated countries.^{20/} Similarly, AT&T has not opposed any subsequent TLD Section 214 application to expand facilities-based services to unaffiliated countries because it cannot point to any risk of anticompetitive behavior ^{21/}

The Commission most recently applied this standard on September 5, 1995. Since AT&T was unable to point to any possible anticompetitive conduct, the

^{17/} TLD Cable Order 9 FCC Rcd at 4044.

^{18/} Id.

^{19/} Id.

^{20/} Letter to William F. Caton, from Stephen C. Garavito, Attorney for AT&T, dated February 3, 1991 (FCC File Nos. ITC 93-091, ITC 94-342, ITC 94-343).

^{21/} See, e.g., FCC File Nos. ITC 95-028, ITC 95-057, ITC 95-165, ITC 95-166, ITC 95-391.

Commission granted TLD's application to provide noninterconnected private line service to the Dominican Republic.^{22/} The Commission has applied the same standard in granting applications of other foreign-affiliated carriers.^{23/}

AT&T has been unable to point to any possible anticompetitive abuse from foreign-affiliated carrier service to unaffiliated countries in this Rulemaking, the foreign-affiliated carrier rulemaking,^{24/} or the applications of TLD or other foreign-affiliated carriers. Thus, there is no basis for believing that there is any significant possibility of such abuses.

In addition, recognizing that the processing of foreign-affiliate carrier facilities-based Section 214 applications has become more routine, the Commission recently delegated to the International Bureau authority to review these applications pursuant to the Commission's delegated authority policy.^{25/} Indeed, under the Commission's standard, foreign-affiliated carrier applications for facilities-based services to unaffiliated countries do not even require individual scrutiny once suitable safeguards are in place. Accordingly, the Commission should adopt its proposed rule.

2. AT&T Has No Policy Support For Its Position

Instead of identifying any potential anticompetitive conduct from foreign-affiliated carrier service to unaffiliated countries, AT&T only vaguely states that the "public interest" warrants an individual evaluation of all Section 214 applications

^{22/} Telefónica Larga Distancia, at 3-4. FCC No. 95-375, ITC 93-091 (released September 5, 1995) ("TLD Dominican Republic/Delegation Order"). The Commission also reclassified TLD as a nondominant carrier to more than 100 countries where it did not have an affiliate that controlled bottleneck facilities. Id. at 5-7.

^{23/} See, e.g., AmericaTel Corporation, 10 FCC Rcd 2091, 2092 (1995).

^{24/} Market Entry and Regulation of Foreign-Affiliated Entities, 10 FCC Rcd 4844 (1995).

^{25/} TLD Dominican Republic/Delegation Order at 9.

filed by a foreign-affiliated carrier.^{26/} AT&T does not identify what this public interest actually is. However, the Commission has previously determined that the public interest is in "reducing the costs of entry and operation" for competing foreign-affiliated carriers.^{27/} AT&T's real interest is in continuing to forestall competition from foreign-affiliated carriers.

Under the proposed rule, AT&T would still have plenty of opportunities to raise any legitimate concerns over foreign-affiliated carrier entry. A foreign-affiliated carrier would have to file an application for a global authorization. That application would not be subject to streamlined processing. AT&T, and any other interested party, would have an opportunity to oppose the grant of global authority, where warranted. In addition, AT&T could also oppose any application by a foreign-affiliated carrier to be classified as a nondominant carrier on any unaffiliated route where it believed there was a significant risk of anticompetitive conduct.

3. AT&T's Position That It Dominant U.S. Carriers Should Receive Global Authorization Is Inconsistent With Its Position On Foreign-Affiliated Carriers

AT&T's position against global authorizations for foreign-affiliated carriers to serve unaffiliated countries is inconsistent with its own request that it be eligible to receive a global authorization despite its dominant carrier status. AT&T states that:

[e]xpansion of service to a new country by **dominant, U.S. carriers** without any foreign affiliation in that country, with virtual certainty, promotes the U.S. public interest in support of effective competition by multiple providers.^{28/}

The same logic applies to foreign-affiliated carriers:

^{26/} AT&T Comments at 6.

^{27/} International Common Carrier, 7 FCC Rcd at 7331.

^{28/} AT&T Comments at 5 (emphasis added).

[e]xpansion of service to a new country by **foreign-affiliated** carriers without any foreign affiliation in that country, with virtual certainty, promotes the U.S. public interest in support of effective competition by multiple providers.

The only difference is that AT&T hopes to exclude "effective competition" from foreign-affiliated carriers

The Commission must recognize that adopting global authority for a dominant carrier, while rejecting it for a foreign-affiliated carrier on its unaffiliated routes would create an awkward result. For example, if AT&T's position is adopted, AT&T could receive global Section 214 authority that covers a country like Japan, where it carries more than half of the international service from the United States. A foreign-affiliated carrier, like TLD, with no affiliation in Japan, and only a minuscule percentage of the U.S. traffic to Japan, however, would be unable to receive global authority covering Japan. This result would defy common sense. Obviously, any anticompetitive threat would come from AT&T which has a majority of the traffic on the U.S.-Japan route, and not TLD which does not have an affiliation, and only a minimal percentage of international service to Japan.

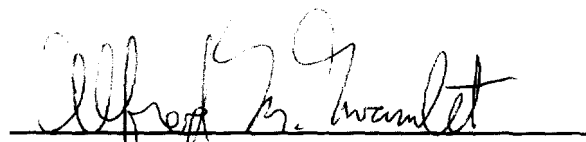
III. CONCLUSION

The Commission should adopt its proposed rule to streamline the Section 214 process. Permitting foreign-affiliated carriers to obtain global authority to expand service to unaffiliated countries will promote the public interest by increasing competition through the reduction of barriers to expansion. AT&T will still have the opportunity to raise any legitimate concerns by opposing a foreign-affiliated carrier's application for global authority

Dated: September 7, 1995

Respectfully submitted,

**TELEFÓNICA LARGA DISTANCIA
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I, Sandra R. Hammond-Murdico, do hereby certify that a copy of the foregoing **TLD's Reply Comments** has been sent via first class mail, postage prepaid, on this 7th day of September, 1995 to the following:

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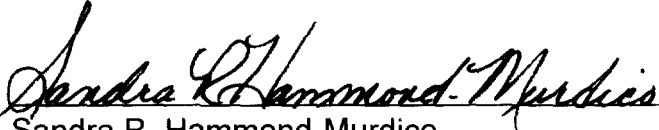
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